

Notice of Allowability

Application No.

10/087,370

Examiner

Jeffrey A. Smith

Applicant(s)

STEFANIK ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to response filed 2/1/05 and Ex. Amend. of 5/2/05.
2. ☒ The allowed claim(s) is/are 1,3-12,14-23 and 25-29.
3. ☒ The drawings filed on 15 October 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

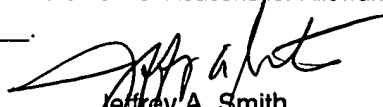
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


Jeffrey A. Smith
Primary Examiner

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

In the Claims

In claim 1, line 12: "a said software selection" has been changed to --a software selection--.

In claim 12, line 10: "device" has been changed to --kiosk--.

In claim 23, line 7: "for" has been deleted.

In claim 23, line 10: "device" has been changed to --kiosk--.

In claim 23, line 13: "also for" has been deleted.

In claim 23, line 15: "for" has been deleted.

In claim 24, line 2: "also for" has been deleted.

EXAMINER'S COMMENT

The amendment to claim 1, line 12 has been conducted in order to remove an obvious typographical error. The term "said" has been deleted making this language consistent with similar phrasing in claims 12 and 23.

The amendment to claim 12, line 10 has been conducted in order to change an obvious editorial error. The term "device" has been changed to --kiosk-- to properly reference the appropriate antecedent structure.

The amendments to claim 23, lines 7, 13, and 15; as well as to claim 24, line 2 has been conducted in order to correct obvious grammatical errors. Each of the recitations here intend to recite an activity that is a response to a condition. As currently amended the activity is positively stated.

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REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

Regarding claims 1 and 12

The prior art of record neither anticipates nor fairly and reasonably teaches a method for distributing software programs comprising, *inter alia*, the step of "in response to a software selection, emulating, on the software dispensing device [or kiosk], a portable computer system, executing said selected software program, wherein a user can manipulate said selected software program".

Regarding claim 23

The prior art of record neither anticipates nor fairly and reasonably teaches a network system for distributing software programs comprising, *inter alia*, a networked server; and a remotely located software dispensing kiosk networked with said server, wherein the system is reasonably capable of performing the following recited function: "in response to a software selection, emulating, on said software dispensing kiosk, a portable computer system executing said selected software

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program, wherein a user can manipulate said selected software program".

Of particular interest are Baker (US 2003/0033243 A1) and Suzuki (5,267,171).

Both Baker and Suzuki permit a user to browse, purchase, and download computer programs or software. Neither Baker nor Suzuki teach emulating, on a software dispensing device (or kiosk), a portable computer system, executing a selected software program, wherein a user can manipulate the selected software program.

The relevant teaching of Suzuki approaches this aspect most closely by disclosing a memory section for storing programs for demonstration of each software and a display for displaying various software demonstrations (see col. 2, lines 56-62).

Suzuki also teaches that a CPU reads programs for the demonstration of that software from the memory section and displays it on the display (see col. 4, lines 45-50). However, these teachings fall short of emulating a portable computer system executing a selected software program, wherein a user can manipulate said selected software program. This is because Suzuki does not teach that the "demonstration" is an emulation of a portable computer system, that the "demonstration" is an

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execution of the selected software program, or that there is any necessary interactivity provided that would provide functionality to a user which would allow for manipulation of the selected software program.

Of additional interest is the newly cited reference to Katz et al. (U.S. Patent No. 5,926,624).

Katz et al. discloses a digital information library and delivery system with logic for generating files targeted to a playback device.

Katz discloses a "software player" which is a software module used to emulate the operation of a mobile playback device and for playing digital information files through the sound circuitry and audio output device of a client computer system (see col. 9, lines 48-52). Katz et al. further discloses that the software player functionally is the equivalent of the functionality and operation of the mobile playback device (see col. 9, lines 55-57).

Katz et al. additionally discloses "client browser software" of the client computer system that operates in cooperation with library management software of the library server and the firmware resident on the mobile playback device to provide a means by which a consumer may browse, preview,

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select, purchase, and take delivery of selected digital information content from the digital information library server across the distribution network.

It is noted that Katz et al. does not disclose that the "software player" is involved in the consumer activities of browsing, previewing, selecting, or receiving of selected digital information content.

It is further noted that Katz et al. does not disclose that the "client browser software" provides the recited "emulation" functionality (see col. 8, line 63-col. 9, line 6).

Moreover, Katz et al. does not disclose a step of "in response to said payment, communicating an instantiation of said selected software program from said software dispensing device to a portable computer system of said user".

It is noted the Katz et al. "software distribution dispensing device" is a client computer system that represents a consumer or end-user computer system with which a consumer may browse, preview, select, purchase, and take delivery of digital information content from the digital information library server across a distribution network (col. 9, lines 14-20). In Katz et al., an instantiation of a selected software program is communicated from a digital information library server to the client computer system (software dispensing device) in response

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to a payment (col. 11, lines 1-12). Once the client computer system secures (i.e. takes delivery of) the instantiation of the selected software program in Katz et al., the client computer system is able to communicate an instantiation of said selected software program from the client computer system (software dispensing device) to a portable computer system of the user (col. 5, lines 26-32), however, such communication is not considered to be in response to said payment since the response to said payment was to communicate an instantiation of said selected software program from said digital information library server to said software dispensing device (client computer system)--rather than from the software dispensing device to the portable computer system.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Sata (JP 2002023878 A) discloses an internet based software distribution system for downloading specific software. A user may confirm whether the software stored in a CD-ROM satisfies his/her needs before purchasing the software by allowing trials with limited usage.


Herbst, Kris: "Try It Before You Buy It"; Desktop Computing; Peterborough: Dec 1983, v3, i12, p22(3) reports on the National Software Reference Library which allows members to test software before buying. Members can log on to the library's database of software via kiosks in retail outlets.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Smith whose telephone number is (571) 272-6763. The examiner can normally be reached on M-F 6:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on (571) 272-7159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeffrey A. Smith
Primary Examiner
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